STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**C.A. No. T16-0006**
	:	**15402503442**
HAGOP SARIBEKIAN	**:**	

DECISION

PER CURIAM: Before this Panel on June 15, 2016—Magistrate Abbate (Chair), Magistrate Noonan, and Judge Parker, sitting—is Hagop Saribekian's (Appellant) appeal from a decision of Judge Almeida (Trial Judge), sustaining the charged violation of G.L. 1956 § 31-15-12, "Interval between vehicles." The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On October 22, 2015, Officer Matthew Ricci of the Cranston Police Department (Officer) charged the Appellant with the aforementioned violation of the Motor Vehicle Code. The Appellant contested the charge, and the matter proceeded to trial on March 8, 2016.

At trial, as a preliminary matter, the Trial Judge dismissed the correlated charge of § 31-34-3, "Operation by person other than lessee."[1] (Tr. at 7.) The Trial Judge determined that the Appellant was not the lessee of the vehicle and, therefore, could not be held liable pursuant to § 31-34-3. Id. The Trial Judge then proceeded to hear testimony from the Officer on the charge of § 31-15-12, "Interval between vehicles." Id.

[1] Section 31-34-3 sets forth: "[w]henever the owner of a motor vehicle rents a vehicle without a driver to another it shall be unlawful for the lessee to permit any other person to operate the vehicle without the permission of the owner."

The Officer testified that at 2:50 p.m., he was traveling on Gansett Avenue when he observed a Honda Accord directly in front of him. Id. at 9. As the Officer followed behind the Honda, he observed that the Honda was following too closely to the vehicle in front of it. Id. The Officer "consider[ed] it tailgating." Id. The Officer explained, "[a]t that time of day, the traffic was light to medium. So it wasn't where there was congestion where the vehicle needed to be traveling that closely. . . ." Id. at 10. The Officer conducted a traffic stop of the Honda as it proceeded from Gansett Avenue onto Cranston Street. The Officer issued a citation to the driver of the Honda, the Appellant, for § 31-15-12. Id. This concluded the Officer's testimony.

At the conclusion of the Officer's testimony, Appellant's counsel moved to dismiss the charged violation, citing the Rhode Island Supreme Court's decision in Wray v. Green, 126 A.3d 476 (R.I. 2015). Id. at 11. Counsel argued that the Court in Wray required testimony regarding the exact distance between the vehicles in order to sustain a charge of § 31-15-12, "Interval between vehicles." Id. Counsel reasoned, "[w]e don't have any testimony from the Officer as [to] what the distance is between the two vehicles, and [Wray] said that we would need proximity and also a distance by testimony from the observing officer for this charge to sustain itself." Id. The Trial Judge countered, "[t]here's no statute that says you must leave . . . so many feet between vehicles . . . the guidance has always been . . . at least one car length." Id. at 15. Counsel maintained that there was no testimony regarding distance, and therefore, the charge must be dismissed. Id. In denying counsel's motion to dismiss, the Trial Judge stated, "in this case, I have an Officer who did talk about [distance]. . . ." Id. at 17.

On cross-examination, the Officer testified that he was sitting at the Mobil gas station on Park Avenue before the road turns into Gansett Avenue when he observed Appellant's vehicle pass by his location. Id. at 19. The Officer continued, "[Appellant's vehicle was] following

behind a pickup truck. And [Appellant's] vehicle was following at a distance that was more closely than reasonable and left insufficient space for any other vehicle to overtake it." Id. At that point, the Officer exited the Mobil gas station parking lot, and followed behind the Appellant's vehicle. Id. at 19-20. The Officer continued to observe the Appellant tailgate the pickup truck; consequently, the Officer conducted a traffic stop. Id. at 20.

Counsel asked the Officer whether there were "any radio communications between [himself] and another member of the Cranston Police Department observing [Appellant] coming from the T-Mobil lot . . . down the road[.]" Id. at 30. The Officer questioned the relevancy of this factor. Id. Counsel explained that there were "investigative police officers watching [Appellant]" and they instructed the Officer to stop the Appellant's vehicle. Id. at 31. Counsel reasoned that this factor "goes directly to this Officer's credibility." Id. at 33. The Trial Judge contested this factor, stating "I don't have the information that any other officer saw [Appellant] doing anything." Id. at 34. Counsel explained that the purpose of the question was to find out whether there was another reason the Officer pulled the Appellant over. Id. The Trial Judge replied, "[y]ou're saying . . . your defense is [the Officer] really didn't see anything . . . and he only pulled [Appellant] over because he was kind of instructed to watch for him from another officer[?]" Id. at 36. Counsel explained that was not his defense; rather, he was asking a "simple, basic question, did [the Officer] receive radio transmission from another officer . . . to pull [Appellant's vehicle] over," prior to making his own observations of Appellant's vehicle. Id. The Trial Judge allowed the question, and the Officer confirmed that he had received a radio transmission from another officer instructing him to "be on the lookout" for Appellant's vehicle. Id. at 39.

After hearing the testimony presented, the Trial Judge recounted the testimony of the Officer, stating, "[t]his is what [the Officer] observed. He observed the traffic violation of following too closely and he pulled [Appellant] over." Id. at 63. The Trial Judge continued, "we know that [the Officer] did receive a call from another officer about this vehicle . . . [b]ut the Officer is saying only because he observed [Appellant] following too closely [did] he pull him over." Id. at 65. The Trial Judge then offered counsel an opportunity to add any additional arguments to the record, stating, "[is there] anything else you want to say?" Id. at 71. Counsel declined to make any further arguments. Id. Thereafter, the Trial Judge adopted the testimony of the Officer as her findings of fact and sustained the charged violation, § 31-15-12. Id. at 72-73. Aggrieved by the Trial Judge's decision, Appellant timely filed this appeal.

Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

> "The appeals panel shall not substitute its judgment for that of the judge or Magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or Magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge's findings, inferences, conclusions or decisions are:
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> "(1) In violation of constitutional or statutory provisions;
> "(2) In excess of the statutory authority of the judge or Magistrate;
> "(3) Made upon unlawful procedure;
> "(4) Affected by other error of law;
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

In reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact." Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mutual Ins. Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). "The review of the Appeals Panel is confined to a reading of the record to determine whether the judge's [or magistrate's] decision is supported by legally competent evidence or is affected by an error of law." Link, 633 A.2d at 1348 (citing Envtl. Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). "In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision." Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge's [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant contends that the Trial Judge's decision was in violation of constitutional provisions, affected by error of law, and clearly erroneous in view of the reliable, probative, and substantial evidence on the record. Specifically, Appellant argues that there was no evidence of proximity or distance as mandated by Wray, and that he was deprived of the opportunity to cross-examine the Officer because his questions were limited in scope by the Trial Judge.

Appellant relies on Wray, arguing that the record is devoid of any evidence of the proximity or distance between Appellant's vehicle and the pick-up truck. This reliance is misplaced.

In Wray, the cause of action was a civil negligence claim, and the plaintiff relied on § 31-15-12 to establish that the defendant breached his duty by not leaving sufficient space between the two vehicles. See Wray, 126 A.2d at 480. The Court held that because the record was devoid of any evidence regarding the proximity of the plaintiff's vehicle to the defendant's vehicle while the two were stopped prior to a collision, the Court could not determine that the defendant breached his duty to operate his vehicle in a reasonably careful manner. Id. In its conclusion, the Court distinguished the situation before it from a violation of § 31-15-12. Id. The Wray Court reasoned that § 31-15-12 applies only to moving vehicles or "vehicles that are traveling" and, therefore, was not relevant to the situation before it. Id. The Court explained that the defendant's vehicle was stopped prior to the accident and, therefore, was neither "traveling" nor "follow[ing] another vehicle" as prescribed in § 31-15-12. Id. As such, there needed to be testimony or evidence of the distance between the two vehicles in order to prove breach of duty. Id.

The holding in Wray has no bearing on Appellant's case. The Wray Court explicitly distinguished the situation before it from a violation of § 31-15-12. Id. This Panel concludes that testimony regarding the proximity of Appellant's vehicle to the pick-up truck is not necessary to sustain a violation pursuant to § 31-15-12.

The only evidence necessary to sustain a violation of § 31-15-12, is testimony establishing that a motorist "follow[ed] another vehicle more closely than is reasonable and prudent . . . and [failed to] leave sufficient space so that an overtaking vehicle may enter and occupy the space without danger." See § 31-15-12.[2] The Officer established these elements at

[2] Section 31-15-12, sets forth: "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon and the condition of the highway, and shall, whenever traveling through a

trial. The Officer testified that he "observed [Appellant's] vehicle was following too closely to the vehicle in front of it." (Tr. at 9.) The Officer stated, "I believed that the vehicle was traveling too closely and more than reasonable in leaving insufficient amount of space for another overtaking vehicle to occupy the space." Id. at 10. The Trial Judge adopted the Officer's testimony as her findings of fact and determined that the Appellant failed to leave a safe distance between his vehicle and the vehicle in front of him. Id. at 72-73. We agree, and conclude that based on the record before us, Appellant followed the vehicle in front of him more closely than was reasonable and failed to leave sufficient space for an overtaking vehicle. See Environmental Scientific Corp., 621 A.2d at 209 ("[t]he [appellate court] should give great deference to the [trial judge's] findings and conclusions unless clearly wrong").

In his second basis for appeal, Appellant argues that he was deprived of the opportunity to cross-examine the Officer and that his questions were limited in scope by the Trial Judge. We find this argument to be without merit in light of the record before us.

The record reflects some confusion regarding a question posed by counsel regarding a radio transmission received by the Officer prior to the traffic stop. (Tr. 30-58.) Counsel responded to the confusion by maintaining that it was "within [his] client's right for [counsel] to cross-examine [the Officer] if there was another reason for him to pull over [the Appellant]." Id. at 37. We agree that the Appellant, and in extension his counsel, had the right to cross-examination of the Officer. See State v. Tiernan, 941 A.2d 129, 134 (R.I. 2008) ("[t]he potential bias of a witness is always subject to exploration by cross-examination, and it is 'always relevant as discrediting the witness and affecting the weight of his testimony'") (internal citation

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business or residential district, and whenever traffic permits, leave sufficient space so that an overtaking vehicle may enter and occupy the space without danger. This provision shall not apply to a caravan under police escort or a funeral procession. Violations of this section are subject to fines enumerated in § 31-41.1-4."

omitted). We further concede that it is "the essence of a fair trial that reasonable latitude be given the cross-examiner. This latitude should include an opportunity for a defendant to establish or reveal possible bias, prejudice, or ulterior motives as they may relate to the case being tried." State v. Anthony, 422 A.2d 921, 924 (R.I. 1980). However, trial justices "retain a considerable degree of discretion to impose reasonable limitations on cross-examination in order to prevent, inter alia, harassment, prejudice, confusion, or repetitive testimony." Tiernan, 941 A.2d at 134.

Although a trial justice retains a degree of discretion to impose reasonable limitations on cross-examination, the record before us is devoid of any indication that the Trial Judge did, indeed, impose limitations on counsel's cross-examination. Rather, the Trial Judge instructed the Officer to answer the question posed by counsel regarding a radio transmission received by the Officer prior to the traffic stop. See Tr. at 39 (Trial Judge stating, "[c]an you answer the question . . . [d]id you get a radio transmission from anybody to be on the lookout for this car?"). Furthermore, counsel asked the Trial Judge for the opportunity to "ask a few more questions," and the Trial Judge allowed counsel the opportunity to do so, replying, "go ahead." Id. at 58.

After counsel's questions, the Trial Judge confirmed that there was nothing else counsel wished to put on the record, stating, "[t]hat's it? Nothing else? Anything else you want to put on the record?" Id. Counsel responded, "No, Your Honor." Id. Prior to issuing a decision, the Trial Judge, again, offered counsel the opportunity to make any further arguments. The Trial Judge stated, "[is there] anything else you want to say?" Id. at 71. Counsel declined to add to the record, and the Trial Judge issued a decision. Id. Therefore, the record demonstrates that the Appellant's right to cross-examination was not unduly restricted. See Anthony, 422 A.2d at 924. Rather, the Appellant, through counsel, was afforded ample opportunity to ask questions

and conduct cross-examination of the Officer. Besides, a trial justice's exercise of discretion to limit the scope of cross-examination "is not reviewable except for clear abuse, and only if it constitutes prejudicial error." State v. Wright, 817 A.2d 600, 610 (R.I. 2003).

We discern no prejudicial error or abuse of discretion. Consequently, we affirm the Trial Judge's decision, as it is supported by legally competent evidence and is not affected by an error of law. See Link, 633 A.2d at 1348 ("[t]he review of the Appeals Panel is confined to a reading of the record to determine whether the judge's decision is supported by legally competent evidence or is affected by an error of law").

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Judge's decision was supported by reliable, probative, and substantial evidence of record. This Panel is also satisfied that the Trial Judge's decision was not clearly erroneous and not otherwise affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

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Magistrate Joseph A. Abbate (Chair)

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Judge Edward C. Parker

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Magistrate William T. Noonan

DATE: _____